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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Hills Department Store Company

Serial No. 74/451,449

A. Yates Dowell, III of Dowell & Dowell for Hills Department Store Company

Anthony R. Masiello, Trademark Examining Attorney, Law Office 104 (Sidney I. Moskowitz, Managing Attorney)

Before Rice, Hanak and Quinn, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Hills Department Store Company (applicant) seeks registration of KITCHEN TRADITION for various kitchen utensils including, among others, non-electric can openers and spatulas. The intent-to-use application was filed on October 26, 1993.

The Examining Attorney refused registration pursuant to section 2(d) of the Lanham Trademark Act on the basis that applicant's mark, as applied to applicant's goods, is likely to cause confusion with the mark TRADITION and design,

previously registered in the form shown below for various kitchen utensils including, among others, non-electric can openers and spatulas. Registration No. 1,619,465.



When the refusal was made final, applicant appealed to the board. Applicant and the Examining Attorney filed briefs. Applicant requested and later waived an oral hearing.

During the examination process, applicant made of record a letter from the owner of cited Registration No. 1,619,465 addressed to applicant. In that letter, registrant's president not only agreed to allow the use and registration of KITCHEN TRADITION by applicant, but in addition, registrant's president stated that "notwithstanding [registrant's] TRADITION trademark ... we [registrant] feel that your [applicant's] use of the KITCHEN TRADITION trademark will not create confusion in the minds of the buying public." Also during the examination process, applicant made of record a number of third-party registration of marks for kitchen utensils (all owned by different entities) which include the word TRADITION. Some of these third-party marks are WALNUT TRADITION, LOVING

TRADITIONS, FAMILY TRADITIONS, HOLIDAY TRADITION, and SHARE THE TRADITION.

Obviously, in this case some of applicant's goods and some of registrant's goods are identical. However, the marks are by no means identical. Moreover, the third-party registrations made of record by the applicant, while not demonstrating that the marks are in actual use, tend to indicate that the term "tradition" has a certain positive connotation when applied to kitchen utensils suggesting that such utensils are long lasting. See also Webster's New World Dictionary (2d ed. 1970).

However, the real key to this case is the aforementioned consent made of record by the applicant. The Examining Attorney is simply incorrect when he characterizes this consent as being a mere "naked consent."

(Examining Attorney's brief page 10). A naked consent is but "a mere consent allowing applicant to register the mark." In re Four Seasons Hotels Ltd., 987 F.2d 1565, 26 USPQ2d 1071, 1074 (Fed. Cir. 1993). As previously noted, the owner of the cited registration has not only consented to the use and registration of KITCHEN TRADITION by applicant, but in addition, the owner of the cited registration has affirmatively stated that applicant's "use of [applicant's] KITCHEN TRADITION trademark will not create confusion in the minds of the buying public." This latter statement by the registrant elevates the consent to a level above that of a mere "naked consent."

While there can be no doubt that the consent given by the registrant could have been more expansive, the consent, coupled with the differences in the marks and the laudatory nature of the term "tradition" as applied to kitchen utensils, causes us to find that there exists no likelihood of confusion.

Decision: The refusal to register is reversed.

J. E. Rice

E. W. Hanak

T. J. Quinn
Administrative Trademark Judges
Trademark Trial and Appeal Board

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